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U.S. ENVIRONMENTAL PROTECTION AGENCY
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August 2, 2005

VIA FAX - 517/373-2040

Mr. Barry H. Selden, Chief
Water Division
Michigan Department of Environmental Quality
Constitution Hall
525 West Allegan Street
Lansing, MI 48909

Re: Williamsburg Receiving and Storage, LLC

Dear Mr. Selden:

Enclosed please find a copy of a letter which was sent to my client, Williamsburg Receiving and Storage, LLC, from Division Chief Rich Powers. Mr. Powers' letter is dated July 25, 2005, and requests a response with documentation by August 1, 2005. As I discussed with you on the phone today, I left messages for Mr. Powers and Ms. Heuer at the District Office regarding the fact that my client did not receive the letter until August 1, 2005. Attached to this correspondence is a copy of the United States Postal Service acknowledgment indicating that the letter was not made available at the post office until Saturday, July 30. Since my client's administrative office is not open on Saturday, my client was not able to retrieve the letter until August 1, the very day of the deadline.

As you can tell from the enclosed, Mr. Powers requests response to several work plan related issues which, quite candidly, cannot be responded to in 24 hours. My client sincerely and in good faith intends to address each of the issues of concern referenced in Mr. Powers' correspondence. I indicated that my client felt that they could respond within one (1) week and you have graciously agreed to extend the August 1 deadline to August 8, 2005. I will make certain that my client's response to each of Mr. Powers' issues will be delivered within that time frame.

COPY

**ZIMMERMAN, KUHN, DARLING,
BOYD, TAYLOR AND QUANDT, PLC**

August 2, 2005
Page 2

In the meantime, it is my understanding that all unauthorized discharges have ceased at the facility. Further, my client expects that the permit modification documentation will be completed within the next ten (10) business days and will be forwarded to the DEQ for comment and processing.

Once again, we appreciate the Department's candor and willingness to work with my client in resolving these important issues. Should you have any additional questions or comments, please feel free to contact me.

Sincerely,

**ZIMMERMAN, KUHN, DARLING,
BOYD, TAYLOR AND QUANDT, PLC**



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JEQ:shp
enclosure

cc: Rich Powers (via fax and first class mail)
Janice Heuer (via fax and first class mail)
Mike Stifler (via fax and first class mail)
Rick Rusz
Ed Roy
Andy Smits
Chris Hubbell

| | | | |
|--|---|---|---|
| United States Postal Service | | Today's Date | Sender's Name |
| Sorry We Missed You! We'll Deliver for You | | 7/29 | D.E.O. |
| Where is it: | | Available for Pick-up After | We will reimburse you for your agent's car pick-up, and cover it. |
| Post Office (See back) | | Date: 7/30 Time: 8 AM | |
| <input checked="" type="checkbox"/> Letter <input type="checkbox"/> Large envelope, magazine, catalog, etc. <input type="checkbox"/> Parcel <input type="checkbox"/> Restricted Delivery <input type="checkbox"/> Perishable Item <input type="checkbox"/> Other: | For Delivery: (Enter total number of items delivered by service type) For Notice Left: (Check applicable item) | <input checked="" type="checkbox"/> If checked, you or your agent must be present at time of delivery to sign for item. | |
| | <input type="checkbox"/> Express Mail (We will attempt to deliver on the next delivery day unless you instruct the post office to hold it.) <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Delivery Confirmation <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Firm Bill | Article Number(s) 70011140000364621356 | |
| Article Requiring Payment | | Amount Due | |
| <input type="checkbox"/> Postage Due <input type="checkbox"/> COD <input type="checkbox"/> Customs | | Customer Name and Address Chris Hubbard 10190 Munro Rd | |
| <input type="checkbox"/> Final Notice: Article will be returned to sender on | | Delivered By and Date | |
| PS Form 3849, November 1999 | | Delivery Notice/Reminder/Receipt | |



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



STEVEN E. CHESTER
DIRECTOR

July 25, 2005

CERTIFIED MAIL

Mr. Christopher Hubbell
Williamsburg Receiving and Storage, LLC
10190 Munro Road
Williamsburg, Michigan 49690

Dear Mr. Hubbell:

SUBJECT: WMD Order No. 31-07-02

This is to inform you that the Department of Environmental Quality (DEQ) has determined that Williamsburg Receiving and Storage, LLC (WRS), is in violation of WMD Order No. 31-07-02 (ACO) and Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and the administrative rules promulgated thereunder. Specific violations of the ACO and Part 31 of the NREPA alleged by the DEQ are as follows:

1. **WRS is discharging food processing wastewater to the waters of the state in violation of Sections 324.3109(1) and 324.3112(1) and Rules 323.2204(2)(a) and 323.2106(1) of the NREPA, and paragraph 4.1.a(1) of the ACO.**

Section 324.3109(1) and Rule 323.2204(2)(a) of the NREPA prohibit a person from discharging a substance that is or may become injurious to any protected uses of the waters of the state. Section 324.3112(1) and Rule 323.2106(1) of the NREPA require a person to obtain a permit prior to discharging any waste or wastewater to the waters of the state. Paragraph 4.1.a(1) of the ACO prohibits WRS from placing cherry processing wastewater into the wastewater storage lagoon, and prohibits WRS from discharging process wastewater to the groundwater unless WRS applies for and obtains a reissuance of Groundwater Discharge Permit No. M00836 authorizing the discharge of all process wastewater proposed for discharge. In accordance with Paragraph 4.1.a(1) of the ACO, WRS is only authorized to discharge cherry pitting wastewater previously authorized for discharge under Groundwater Discharge Permit No. M00836 upon a demonstration that all other process wastewater is effectively isolated from the discharge. As of the date of this letter, WRS has not applied for nor obtained authorization to discharge any other process wastewater.

The following illegal discharges have occurred on and from the WRS property in violation of the above referenced requirements:

- a. WRS has discharged process wastewater into a storm water retention basin located north of the maintenance building and then discharged the process wastewater from the storm water basin to a nearby ravine. Employees of Whitewater Township observed this discharge on two occasions during May and June 2005. The DEQ inspected the WRS property on June 6, 2005, and observed process wastewater in the storm water basin and dead vegetation

indicative of a discharge in the ravine. Two water samples collected from the basin by the DEQ documented concentrations of biological oxygen demand (BOD) at 1,400 milligrams per liter (mg/l) and 3,700 mg/l, and chloride at 524 mg/l and 518 mg/l. The high concentrations of BOD and chloride are not characteristic of clean storm water. During the July 15, 2005, inspection, WRS told the DEQ that a malfunctioning hydrosieve caused wastewater to overflow to the storm water basin.

- b. During the July 15, 2005, inspection, the DEQ observed valved piping in the sump of the hydrosieve treatment area that WRS said was connected to both the sealed wastewater storage tank and to piping that runs underground to the north, ending on the Paradis property parcel. This parcel is now owned by WRS. The DEQ observed evidence of past discharges to the Paradis parcel. A vertical black iron pipe had a large area of reddish, black stained soils and dead vegetation around it. Stained soils, dead vegetation, and erosion gulleys showed signs of discharge to the north of this site for several hundred feet. An excavated pond approximately 30 feet by 30 feet contained dark water. A generator was positioned on the berm of this pond. The DEQ observed evidence of flows being pumped from this pond to the surface of the ground with the flows entering a smaller pond downstream of the large pond. Dead or stressed vegetation could be observed from this point to beyond Munro Road to the west, off the WRS property.
- c. During the July 15, 2005, inspection, the DEQ observed evidence of discharges to areas east and southeast of the wastewater storage lagoon. There was ponded water in the location to the southeast and dead vegetation in the location to the east. Irrigation piping was observed in this area coming from the lagoon.

2 The management and/or discharge of food processing wastewater by WRS has caused nuisance odor conditions in violation of Rule 323.2204(2)(b) of the NREPA and paragraph 4.1.b(5) of the ACO.

Rule 323.2204(2)(b) of the NREPA prohibits a discharge from causing nuisance conditions, including nuisance odors. Paragraph 4.1.b(5) of the ACO prohibits WRS from emitting nuisance odors beyond the property boundary.

Beginning in April 2005, the DEQ began receiving complaints of nuisance odors emanating from the WRS property. The number of complaints received by the DEQ has escalated to several dozen during each of the months of June and July 2005. Based on an evaluation of the complaints received and on-site and off-site observations, the DEQ has determined that WRS has caused nuisance odor conditions in violation of Rule 323.2204(2)(b) of the NREPA and Paragraph 4.1.b(5) of the ACO.

3. WRS is storing food processing wastewater in brine pits in violation of paragraph 4.1.b(1)(i) of the ACO.

Paragraph 4.1.b(1)(i) of the ACO requires that all process wastewater not authorized for discharge under a permit must be placed in sealed tanks to prevent odors and lawfully transported and disposed of in accordance with Part 121, Liquid Industrial Wastes, of the NREPA. During the June 6, 2005, and July 15, 2005, inspections, the DEQ observed process wastewaters stored in brine pits in violation of paragraph 4.1.b(1)(i) of the ACO.

During the July 15, 2005, inspection, WRS told the DEQ that 18 brine pits contained process wastewater. WRS has stopped transporting and disposing of the process wastewater.

4. **WRS has failed to reapply for authorization to discharge storm water. General Permit No. MIS519000 expired on April 1, 2005, and WRS no longer has an authorization to discharge storm water from its property.**

Any discharge of storm water after April 1, 2005, is in violation of Section 3112(1) of the NREPA. As noted above, WRS has discharged process wastewater into the storm water pond, and then to a forested ravine in violation of Section 3112(1) of the NREPA. In addition, storm water basins to the east of the production building appear to contain brines. Several totes full of waste food products were observed outside storage areas and were exposed to precipitation. Brine transfers are being done without the use of secondary containment pans under the hoses.

WRS must take immediate steps to comply with Part 31 of the NREPA, its administrative rules, and the ACO. Specifically, WRS must:

1. Cease all unauthorized discharges of process wastewater to the ground and groundwater.
2. Cease the placement of process wastewater in brine pits and lawfully dispose of all accumulated wastewater. WRS must resume the placement of all process wastewater in sealed tanks and transport and dispose of all process wastewater in accordance with paragraph 4.1.b(1)(i) of the ACO.
3. Implement measures to eliminate nuisance odors.
4. Close the wastewater storage lagoon in accordance with Rule 323.2226 of the NREPA.
5. Promptly submit an application for a National Pollutant Discharge Elimination System storm water permit. Any discharge of storm water prior to obtaining a permit will be in violation of Part 31 of the NREPA. Until a new permit is obtained, WRS should, at a minimum, comply with its existing Storm Water Pollution Prevention Plan.
6. Remove all process wastewater from storm water basins, properly manage brine transfers using secondary containment, and isolate all wastes stored on-site from precipitation.
7. Submit a work plan to investigate and determine any adverse impacts to soils or groundwater caused by the unauthorized discharges to the ground and groundwater and to the storm water basins.

By August 1, 2005, WRS must submit to the DEQ documentation that WRS has completed the required actions, including a description of how WRS intends to comply with these requirements in the future. The submittal must also include a schedule for WRS to submit for approval and implement a closure plan for the wastewater storage lagoon and the work plan to investigate and determine any adverse impacts to soils or groundwater caused by the discharges.

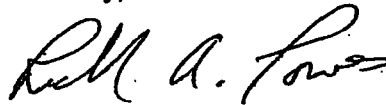
WRS must also enter into an enforceable agreement with the DEQ by no later than **September 1, 2005**, to perform the identified actions. The agreement will include appropriate stipulated penalties and/or civil fines, and payment of the DEQ's costs of surveillance and enforcement incurred in this matter.

Failure by WRS to submit the documentation by **August 1, 2005**, or enter an enforceable agreement with the DEQ by **September 1, 2005**, will result in further escalated enforcement actions by the DEQ to compel WRS's compliance with the terms of the ACO, and Part 31 of the NREPA.

This letter does not relieve WRS of any liability for past or continuing violations of the ACO and Part 31 of the NREPA. The DEQ reserves its right to take all necessary and appropriate enforcement actions for all violations observed to date and any violations that occur in the future. This may include civil and criminal litigation and petitions for penalties in the maximum amount provided by law, including recovery of all legally incurred costs and attorney's fees.

If you have any questions, please contact Mr. Rick Rusz, Enforcement Specialist, Enforcement Unit, Field Operations Division, Water Bureau, at 517-335-4709, or you may contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick A. Powers", is written over the typed name.

Richard A. Powers, Chief
Water Bureau
517-335-4176

cc: Mr. Joseph E. Quandt, Zimmerman, Kuhn, Darling, Boyd, Taylor & Quandt, PLC
Mr. Alan F. Hoffman, Department of Attorney General
Mr. Stanley F. Pruss, Deputy Director, DEQ
Ms. Carol Linteau, Legislative Liaison, DEQ
Mr. Frank J. Baldwin, DEQ
Mr. Barry H. Selden, DEQ
Mr. Michael Stifler, DEQ
Mr. Rick Rusz, DEQ